

Hasfurther



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EXECUTONE Information Systems, Inc.

File: B-239460

Date: August 23, 1990

Harvey J. Volzer, Esq., Kilcarr & Volzer, for the protester.
Douglas P. Larsen, Jr., Esq., Department of the Navy, for
the agency.

David Hasfurther, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly failed to provide the protester with an opportunity to compete for a procurement is dismissed as untimely since protest was not filed within 10 working days after the protester learned the basis for its protest.

2. Allegation that specifications were defective and that insufficient time was permitted for the submission of a quotation is dismissed as academic where the protester did not submit a quotation or a timely protest regarding its failure to receive the solicitation and the protester was not, therefore, eligible to receive the award.

DECISION

EXECUTONE Information Systems, Inc. (EIS), protests the award to L & S Electronics of a contract for a nurse call system for the Charleston Naval Hospital pursuant to request for quotations (RFQ) No. N00612-90-Q-0278. EIS argues that it was not provided with the RFQ and thus was improperly denied the opportunity to compete. It further argues that in any event the RFQ was defective as it did not allow sufficient time within which to respond and did not contain adequate specifications.

We dismiss the protest.

Since the Hospital's nurse call system was damaged by Hurricane Hugo in September 1989, the Navy made several attempts to purchase a new system, including obtaining

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preliminary quotations from both L & S and EIS, until it finally obtained funding in March 1990. Because of the amount of time that had elapsed since the system had become unworkable, the agency determined pursuant to 10 U.S.C. § 2304(c)(2) (1988), that other than competitive procedures could be used here since the Hospital's need for the system was of such an unusual and compelling urgency. Accordingly, the RFQ, which was issued on March 22, required quotations for the system to be submitted by 2:00 p.m. on March 23. The Navy contract specialist states that she transmitted the RFQ by facsimile on the afternoon of March 22 to three companies: Dukane Corporation, L & S, and EIS and that in each case she received a confirmation that the transmission had in fact been sent. Only L & S submitted a quotation. Award was made to L & S on April 3 for the system in the amount of \$188,447.63.


EIS' protest is twofold. First, EIS contends that the agency improperly failed to give it an opportunity to compete for the award. The protester states that it did not receive a copy of the RFQ on March 22. Second, EIS contends that even if it had received the RFQ, the submission of a timely quotation would have been impossible, since the specifications did not clearly describe the system needed and because the 24-hour time period provided for the submission of quotations was not sufficient.

The portion of the protest concerning the agency's alleged failure to solicit EIS is untimely. The record shows that in a telephone conversation with the contract specialist on April 10, EIS was told that the RFQ had been transmitted by facsimile to it on March 22, that it was too late for the firm to submit a quotation since an award had already been made under the RFQ. EIS filed its protest with our Office on April 27. To be timely under our Bid Protest Regulations, a protest must be filed within 10 working days after the protester knows or should have known the basis of its protest. 4 C.F.R. § 21.2(a)(2) (1990). Since EIS' protest against the agency's alleged failure to give it an opportunity to compete was filed more than 10 working days after EIS learned the grounds for this portion of its protest on April 10, that protest issue is untimely and will not be considered.

As far as EIS' arguments concerning the content of the RFQ are concerned, since EIS neither submitted a quotation nor timely protested the agency's alleged failure to solicit it, the protester was not part of the competition for this procurement and was thus not eligible to receive a contract

award. Consequently, it is academic whether the terms of the RFQ would have allowed EIS to submit a quotation. BOW Indus., Inc., B-216512, Apr. 17, 1985, 85-1 CPD ¶ 436.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "John Brosnan".

John Brosnan
Assistant General Counsel